Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1971

NO. 71-955

JOHN C. CRIM, a/k/a a BOB MILLER,
Petitioner,

-vs-

THE STATE OF INDIANA
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

THEODORE L. SENDAK,
Attorney General of Indiana

DARREL K. DIAMOND
Deputy Attorney General

Attorneys for Respondent

Offices of the Attorney General
219 State House
Indianapolis, Indiana 46204
Telephone: 317-633-5512

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QUESTION PRESENTED FOR REVIEW

Whether Petitioner's conviction of the crime of theft resulted from evidence obtained through an illegal search and seizure.

STATEMENT OF THE CASE

Petitioner's Statement of the Case is substantially correct. Certain corrections

and additions to the recitation of the facts of the case are necessary, though.

Petitioner alleges (Petition for Writ, p. 8) that the search of the pickup truck occurred after the search of the person. The record shows that the two searches overlapped in time so as to be in part simultaneous. Deputy Sheriff Carlin testified that at the beginning of the booking process he left the room in which that activity was taking place and that he was at the truck while they were completing the booking. (R. 131, 132).

The other aspect to be considered here is the identification of Petitioner as the "Bob Miller" whose name was given as owner of the stolen livestock. The animals were left at a sales barn during the night. There was no testimony as to who left them except

that a notice was left showing them to be consigned for sale by one "Bob Miller". Petitioner was identified as the man who represented himself as "Bob Miller" on several occasions to recieve checks for the sale of the livestock stolen in this case and in earlier sales of livestock. (R. 155, 213 -229). It might be noted though, that the bulk of this evidence came in the trial proper rather than the hearing on the Motion to Suppress.

ARGUMENT

PETITIONER'S CONVICTION DID NOT RESULT FROM AN ILLEGAL SEARCH AND SEIZURE

Petitioner's claim will be here considered from several aspects. It is first necessary to state specifically the claim Petitioner is now stating in this Court.

The validity of the arrest is not disputed. The legality of the search of Petitioner's person and the admissibility of the evidence obtained in that search is not disputed. It is not disputed that the search of the vehicle at the jail has the same validity, if made upon probable cause, as an immediate search at the place of the arrest. No issue other than the search of the vehicle is raised. The only issue is whether the deputy sheriffs had probable cause to search the vehicle for evidence which might help establish Petitioner's guilt.

That specific issue, as opposed to a general issue of searches and seizures, is presented for the first time in this Court. The Motion to Suppress filed in the trial court alleged the searches of the person and vehicle

to be unlawful on the grounds that Petitioner's arrest was unlawful. (R. 25-26). Petitioner's brief to the Indiana Supreme Court was also based on this issue of a search pursuant to an unlawful arrest. That brief failed to refer even once to the checkbook which is the evidence now alleged to have tainted the conviction. This Court has stated that it will not consider claims which are raised for the first time in this Court. Cardinale v. Louisiana, 394 U.S. 437 (1969).

Even were Petitioner's claim properly before the Court, the conviction is valid. The conviction can be upheld on the ground that the search was valid or on the ground that, if there were error, that error was harmless.

This Court stated in Chambers v. Maroney, 399 U.S. 42 (1970) that a warrantless search

of a vehicle being operated by a suspect at the time of his arrest is valid, if made with probable cause, whether the search is made immediately at the place of arrest or later at a police station or jail. The officers in this case did have probable cause for a search of the vehicle. They had been informed that Petitioner had just presented himself at the sales barn as "Bob Miller" and recieved a check for the stolen livestock. This information was sufficient basis for belief that Petitioner was one of the thieves. There was testimony at the trial showing that the particular pickup truck involved here might have been used in the theft. (R. 196-198, 200-202).

Petitioner argues that the only evidence that there could be any probable cause to believe existed was the check and sales memorandum

just received at the sales barn, because there was no probable cause to believe that Petitioner had been involved in the theft itself. As already shown, the belief which the officers could reasonably have went beyond that. Petitioner's approach draws an unreasonably fine line in distinguishing what is or is is not reasonable to believe.

Accepting for purposes of argument that the search could only properly be aimed at the two items noted above, the record will still support the validity of the search. The allegation that the search of the person totally preceded the search of the vehicle is contrary to the facts shown by the record. As shown in the Statement of The Case, supra, the two searches appear to have been at least partially simultaneous.

Nor would it have been necessary to delay the search of the vehicle until the completion of the search of the person. It is the teaching of Chambers v. Maroney, supra, that the search can be carried out as soon after the impounding of the vehicle as desired.

Alternatively, any error in the search of the vehicle would be harmless. Chapman v. California, 386 U.S. 18 (1967). The only evidence complained of was an unused checkbook in the name of "Bob Miller". (R. 119). The only use of such evidence was to indicate that Petitioner did use the alias (assuming the checkbook to be his property.) There was ample evidence of identification of Petitioner as "Bob Miller" through the testimony of the witness Edwin M. Bontrager that Petitioner had used that alias on a number

of occasions in selling livestock. (R. 213-229). And it might even be submitted that the mere identification of Petitioner as the man who represented himself as "Bob Miller" on the one occasion which led to his arrest would have been sufficient to uphold a conviction. Petitioner's argument that the checkbook was vital to the State's case is simply illogical. If an indication of the importance of the piece of evidence is to be given, that checkbook would more likely be the least important evidence than to be crucial to the State's case.

CONCLUSION

For these reasons, the Petition For Writ of Certiorari should be denied.

Respectfully submitted,

THEODORE L. SENDAK
Attorney General of Indiana

DARREL K. DIAMOND
Deputy Attorney General

Attorneys for Respondent